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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/801,908	03/09/2001	Michael Stroble	833970.0002	2601

7590

06/28/2002

John W. Ryan
WILMER CUTLER & PICKERING
2445 M Street, N.W.
Washington, DC 20037-6000

EXAMINER

HENLEY III, RAYMOND J

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 06/28/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/801,908

Applicant
Strobel, et al.

Examiner
Ray Henley

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1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 17, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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CLAIMS 1-20 ARE PRESENTED FOR EXAMINATION

Applicants' Amendment and Response under 37 CFR §1.111 filed June 17, 2002 has been received and entered into the application. Accordingly, claims 2, 19 and 20 and the specification at pages 3-5 have been amended. Also, the abstract has been added.

In light of applicants' amendment to claims 2 and 20, the rejection of claims 2 and 20 under 35 U.S.C. § 112, second paragraph, as set forth in the previous Office action dated March 29, 2002 at page 2 is withdrawn.

Claim Rejections - 35 USC § 102

I Claims 1 and 12 remain rejected under 35 U.S.C. 102(b) as being anticipated by Dondi et al. (U.S. Patent No. 5,624,682), already of record, for the reasons of record as set forth in the previous Office action at page 3.

Applicants' arguments at page 4 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination.

In particular, applicants have argued that Dondi et al. do not teach the use of their formulation to treat animals. This, however, is immaterial here where a pharmaceutical composition is claimed and not a method of treatment. The presently claimed pharmaceutical composition is evaluated against that composition taught by Dondi et al. in terms of the form of

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the composition and the components of the composition. Each material element recited in the present claims is present in the teachings of Dondi et al..

Also, applicants have argued that Dondi et al. fail to disclose a pharmaceutical solution comprising ketoprofen and an edible base for oral medicating of animal. This, however, is merely a gratuitous assertion to the contrary of the Examiner's findings, which findings are supported by the specific teachings of Dondi et al.. In the absence of statements of fact to support applicant's position, the Examiner is not persuaded of error.

II Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Daher (U.S. Patent No. 5,348,745), already of record, for the reasons of record as set forth in the previous Office action at page 3.

Applicants' arguments at pages 4-5 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination.

In particular, applicants have argued that Daher does not teach the use of their formulation to treat animals. This, however, is immaterial here where a pharmaceutical composition is claimed and not a method of treatment. The presently claimed pharmaceutical composition is evaluated against that composition taught by Daher in terms of the form of the composition and the components of the composition. Each material element recited in the present claims is present in the teachings of Daher.

Applicants have also argued that Daher teaches the opposite of the present invention because the patentee teaches the formulation of a tablet, while the present invention is directed to

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an aqueous solution. The Examiner has, however, pointed to where the patentee teaches an aqueous granulating solution and such solution is not patentably distinct from the presently claimed solution in terms of its form or the components present.

Claim Rejection - 35 USC § 103

I Claims 1, 5-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dondi et al. (as above) for the reasons of record as set forth in the previous Office action at pages 3-4.

Applicants arguments at pages 5-6 of the amendment have been carefully considered, but fail to persuade the Examiner of error in his determination of obviousness.

In particular, applicants have argued that the compositions would not be useful for the treatment of certain animals, e.g., a cow, because of the cumbersome nature of handling the animals or the dosage taught by Dondi et al. For the reasons specified above by the Examiner, this point is not material to those claims defining a composition of matter. With respect to the present claims directed to a method of treatment, such claims are silent as to any specific type of animal and thus would include, at the very least, the most obvious host suggested by Dondi et al, namely animal which is a human.

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II Claims 1-4 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daher (as above), for the reasons of record as set forth in the previous Office action at pages 4-5, as applied to claims 1-20.

Applicants' arguments at pages 6-8 of the amendment have been carefully considered and given the fact that the granulating solution of Daher would have to be first formulated into a tablet form before administration while present claims 5-12 are directed to the administration of a solution, claims 5-12 are no longer subject to the present rejection.

The arguments have also been carefully considered with respect to claims 1-4 and 13-20, however, such arguments are not persuasive as such arguments are directed to the manner in which the solution is to be used which are immaterial to the present claims which are merely directed to the composition itself, or to the manner in which the composition is to be prepared. Such a composition and manner of preparation are deemed to remain as being obvious over the teachings of the patentee.

Accordingly, for the above reasons, the claims are deemed to remain properly rejected and none of the claims are allowed.

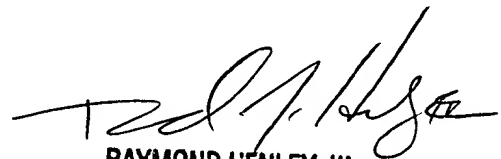
THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ray Henley whose telephone number is (703) 308-4652.



RAYMOND HENLEY, III
PRIMARY EXAMINER
GROUP 1200

Henley; rjh
June 26, 2002